

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TREVOR WILLIAMS,

Plaintiff,

v.

REMINGTON ARMS COMPANY, INC.,

Defendant.

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CIVIL ACTION NO. _____

8-05 CV 1383-D

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff, Trevor Williams, complaining of Remington Arms Company, Inc., Defendant, and for cause of action would show the Court and the jury the following:

I.

JURISDICTION AND VENUE

1. The jurisdiction of this Court attaches under the provisions of 28 U.S.C. §1332, in that the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000, and the parties are citizens of different states.

2. Jurisdiction in this case is founded on diversity of citizenship, and venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(a) and (c). Here, there is only one Defendant, so all defendants reside in the same state. 28 U.S.C. § 1391(a)(1). Further, for purposes of the federal venue statute, Remington is deemed to reside in any judicial district in

which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. § 1391(c). Remington, through its distributors and retailers, currently sells its firearms products throughout the Northern Judicial District of Texas. Thus, Remington's contacts with the Northern District of Texas are continuous and systematic. Therefore, venue is proper in the Northern Judicial District of Texas.

II.

PARTIES

3. Plaintiff Trevor Williams is a citizen of the State of Texas and resides in Williamson County, Texas.

4. Defendant Remington Arms Company, Inc. (hereinafter "Remington") is a corporation foreign to the State of Texas being duly organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of Texas by selling, manufacturing and distributing rifles through its distributors and sales force. Service of process on this defendant can be completed by serving its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

III.

FACTUAL BACKGROUND

5. On March 14, 2004, at a ranch in Prowers County, Colorado, Matthew Hershey was handling a Remington Model 710 when it suddenly and unexpectedly discharged and shot Trevor Williams. The trigger was not pulled or contacted in any manner, but instead the rifle

fired as a result of defects in the Walker fire control system. The bullet from the rifle entered Trevor Williams' right hip, shattering the bone and piercing his sciatic nerve. This incident has caused Trevor to require numerous surgeries and, as a result, he has very limited use of his right leg, causing permanent pain, scarring, and disability.

6. Defendant Remington is now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 710 bolt action rifle including the action, fire control system, and safety, bearing serial no. 71122640 (hereinafter "rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

7. The Remington Model 710 bolt action rifle contains a dangerously defective Walker fire control system which may fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped.

8. The subject rifle was manufactured in June of 2003 by Remington, and it was sold at retail by Wal-Mart Supercenter, Store No. 467, in Denton, Texas on or about January, 2004.

9. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines, including the Remington Model 710 bolt action rifle, without any significant changes.

10. Plaintiff is bringing this action to recover damages from Defendant arising from Trevor Williams' personal injuries caused by this incident. Plaintiff Trevor Williams' damages include past and future medical and related expenses, mental and physical pain and suffering,

loss of earnings, impaired earning capacity, permanent disability, disfigurement and other general and special damages in an amount to be determined by the jury at trial of this action.

IV.

COUNT I: STRICT LIABILITY

11. Defendant is strictly liable to Plaintiff for designing, manufacturing, and placing into the stream of commerce the Remington Model 710 bolt action rifle, which was unreasonably dangerous for its reasonably foreseeable uses because of the following design defects, which were a producing cause of the occurrence in question: The rifle in question has a propensity to unexpectedly discharge without pulling the trigger.

12. The Remington Model 710 bolt action rifle was in a defective and unreasonably dangerous condition because of Remington's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger.

13. Plaintiff and Matthew Hershey had no knowledge of this defective condition present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge.

14. As a direct result of Remington's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger, Plaintiff has suffered and is entitled to recover the damages from Remington.

COUNT II: NEGLIGENCE

15. Defendant was negligent in the design, manufacture and marketing of the product in question. Defendant knew, or in the exercise of ordinary care should have known, that the

Remington Model 710 Rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner for which it was intended to be used.

Defendant was negligent in the particulars set forth in this and the preceding paragraph and such negligence was a proximate cause of the occurrence in question.

16. Defendant knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing injury to Trevor Williams. Defendant, further, had actual knowledge of the means of designing such a product which would not fail in one or more of these ways. Notwithstanding this knowledge, Defendant failed to equip the product in question with an adequate fire control system to prevent the injuries to Trevor Williams.

17. Defendant knew, or in the exercise of ordinary care should have known, of problems with such failures to its Model 710 Rifle and its other rifles but failed to notify or warn owners or the generic public prior to Trevor Williams' injuries.

18. Defendant owed Plaintiff the duty of reasonable care when it designed, manufactured, and marketed the product in question. Defendant violated its duty and was negligent in the particulars set forth above.

19. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and damages to Plaintiff.

X.

DAMAGES AS TO PLAINTIFF

20. As a result of Defendant's acts and/or omissions, Plaintiff Trevor Williams has

experienced physical pain and suffering in the past and in all reasonable probability will sustain physical pain and suffering in the future.

21. Plaintiff Trevor Williams is a partial paraplegic, thereby causing extensive physical impairment, incapacity and disability in the past, and extensive physical impairment, incapacity and disability in the future.

22. Plaintiff Trevor Williams has incurred other pecuniary damages in the past and in reasonable probability will continue to suffer pecuniary loss in the future, including loss of earnings and earning capacity and the ability to conduct household tasks and other aspects of personal care and service.

23. Plaintiff Trevor Williams has suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future.

24. Plaintiff Trevor Williams has incurred reasonable and necessary medical expenses in the past and based upon reasonable medical probability will incur reasonable and necessary medical expenses in the future.

25. The above and foregoing acts and/or omissions of Defendant has caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

XIII.

CLAIM FOR PREJUDGMENT INTEREST

26. Plaintiff herein claims pre-interest in accordance with Texas law.

XIV.

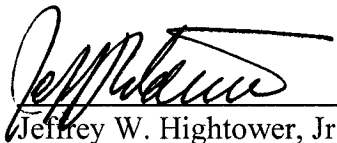
JURY DEMAND

27. Plaintiff requests that a jury be convened to try the factual issues in this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that upon trial of this cause, this Honorable Court enter judgment for Plaintiff against Defendant for the damages requested herein, for cost of bringing this action, for interest from the date of the incident made the basis of this suit, and for such other relief as may appear to the Court to be proper.

Respectfully submitted,

LAW OFFICES OF WINDLE TURLEY, P.C.



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1000 Turley Law Center
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Telephone No. 214/691-4025
Telecopier No. 214/361-5802

ATTORNEY FOR PLAINTIFF

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Trevor Williams	DEFENDANTS Remington Arms Company, Inc.
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> JUL 14 2005 CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS </div>	
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U S PLAINTIFF CASES) Williamson County	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Jeff W. Hightower, Jr., Law Offices of Windle Turley, 1000 Turley Law Center, 6440 N. Central Expwy, Dallas, TX 75206, 214-691-4025	Attorneys (If Known) <div style="font-size: 1.5em; font-weight: bold; text-align: center;">3-05CV1383-D</div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U S Government Plaintiff <input type="checkbox"/> 2 U S Government Defendant <input type="checkbox"/> 3 Federal Question (U S Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition
FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)		Transferred from another district (specify)		Appeal to District Judge from Magistrate Judgment
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)
<input type="checkbox"/> 6 Multidistrict Litigation				
<input type="checkbox"/> 7				

VI. CAUSE OF ACTION Brief description of cause: A rifle manufactured by Defendant has a propensity to unexpectedly discharge without pulling the trigger. The rifle in question discharged without pulling the trigger and shot Plaintiff in hip.	Cite the U S Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC §1332
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23	DEMAND \$ Exceeds \$75,000	CHECK YES only if demanded in complaint JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions).	JUDGE _____ DOCKET NUMBER _____
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DATE: July 8, 2005	SIGNATURE OF ATTORNEY OF RECORD: <i>[Signature]</i>
FOR OFFICE USE ONLY	

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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